

Senate File 261

H-1650

1 Amend Senate File 261, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 5, before line 19 by inserting:

4 <Sec. \_\_\_\_\_. Section 423.1, subsection 37, paragraphs  
5 b and c, Code 2011, are amended to read as follows:

6 *b.* The property is transferred to the user of  
7 the service in connection with the performance of  
8 the service in a form or quantity capable of a fixed  
9 or definite price value, or the property is entirely  
10 consumed in connection with the performance of the  
11 service purchased by the ultimate user.

12 *c.* The sale is evidenced by a separate charge for  
13 the identifiable piece of property unless the property  
14 is entirely consumed in connection with the performance  
15 of the service purchased by the ultimate user.>

16 2. Page 6, before line 13 by inserting:

17 <Sec. \_\_\_\_\_. Section 423.37, Code 2011, is amended to  
18 read as follows:

19 **423.37 Failure to file sales or use tax returns —**  
20 **incorrect returns — auditing of records.**

21 1. As soon as practicable after a return is filed  
22 and in any event within three years after the return  
23 is filed, the department shall examine it, assess and  
24 determine the tax due if the return is found to be  
25 incorrect, and give notice to the person liable for the  
26 tax of the assessment and determination as provided  
27 in subsection 2. The period for the examination and  
28 determination of the correct amount of tax is ~~unlimited~~  
29 ~~in the case of a false or fraudulent return made with~~  
30 ~~the intent to evade tax or in the case of a failure to~~  
31 ~~file a return~~ subject to the limitations in subsection  
32 4.

33 2. *a.* If a return required by this subchapter is  
34 not filed, or if a return when filed is incorrect or  
35 insufficient and the maker fails to file a corrected  
36 or sufficient return within twenty days after the  
37 same is required by notice from the department, the  
38 department shall determine the amount of tax due from  
39 information as the department may be able to obtain  
40 and, if necessary, may estimate the tax on the basis of  
41 external indices, such as number of employees of the  
42 person concerned, rentals paid by the person, stock on  
43 hand, or other factors.

44 *b.* The determination may be made using any  
45 generally recognized valid and reliable sampling  
46 technique, whether or not the person being audited  
47 has complete records, as mutually agreed upon by the  
48 department and the taxpayer. The department shall give  
49 notice of the determination to the person liable for  
50 the tax.

1 c. The determination shall fix the tax unless the  
2 person against whom it is assessed shall, within sixty  
3 days after the giving of notice of the determination,  
4 apply to the director for a hearing or unless the  
5 taxpayer contests the determination by paying the  
6 tax, interest, and penalty and timely filing a claim  
7 for refund. At the hearing, evidence may be offered  
8 to support the determination or to prove that it is  
9 incorrect. After the hearing the director shall give  
10 notice of the decision to the person liable for the  
11 tax.

12 3. a. The three-year period of limitation provided  
13 in subsection 1 may be extended by a taxpayer by  
14 signing a waiver agreement form to be provided by the  
15 department.

16 b. The agreement shall stipulate the period of  
17 extension and the tax period to which the extension  
18 applies.

19 c. The agreement shall also provide that a claim  
20 for refund may be filed by the taxpayer at any time  
21 during the period of extension.

22 4. Subject to the limitations of paragraphs "a"  
23 and "b", the department shall have the right and duty  
24 to examine or cause to be examined the books, papers,  
25 records, memoranda, or documents of a taxpayer to  
26 verify the correctness of a return filed, estimate the  
27 tax liability, and assess tax of any taxpayer.

28 a. If a return is filed as required under this  
29 chapter, the right and duty of the department to  
30 examine records and assess tax under this subsection  
31 4 is limited to:

32 (1) The period beginning three years prior to and  
33 ending on the due date of the return if there was  
34 not willful neglect of the filing requirements by the  
35 taxpayer.

36 (2) The period beginning seven years prior to and  
37 ending three years after the due date of the return if  
38 there was willful neglect of the filing requirements  
39 by the taxpayer.

40 b. If a return is filed as required under this  
41 chapter, the right and duty of the department to  
42 examine records and assess tax is limited to:

43 (1) The period beginning one year prior to and  
44 ending on the due date of the return if there was  
45 no willful neglect of the filing requirements or no  
46 substantial understatement of tax due by the taxpayer.

47 (2) The period beginning seven years prior to and  
48 ending three years after the due date of the return if  
49 there was willful neglect of the filing requirements or  
50 substantial understatement of tax due by the taxpayer.

1 c. For purposes of this subsection:  
2 (1) "Willful neglect of the filing requirements by  
3 the taxpayer" means action or inaction by the taxpayer  
4 with the intent to evade tax.  
5 (2) "Substantial understatement of tax by the  
6 taxpayer" means the tax liability reported by the  
7 taxpayer is 50 percent or less than the tax assessed  
8 by the department.>  
9 3. By renumbering as necessary.

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COMMITTEE ON WAYS AND MEANS  
SANDS of Louisa, Chairperson